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No. 95-1468

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

WILLIAM POWERS, Chairman, New York Republican State Committee; NEW YORK REPUBLICAN STATE COMMITTEE; NEW YORK STATE BOARD OF ELECTIONS, *et al.*,
Cross-Petitioners,
v.
LARRY ROCKEFELLER; HOLACE MORANCI; NEIL MORANCI; DONNA MORANCI; MARY PARRISH; LUGENIA GORDON; HELEN DALLEY; BETSY WEBSTER; BETSY M. BLATTMACHR; NANCY BURNER; CORNELIUS P. DUGAN; and STEVE FORBES,
Cross-Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether a dispute concerning the manner in which a political party selects delegates to its national convention is justiciable?

PARTIES TO THE PROCEEDING

The plaintiffs are Larry Rockefeller, Holace Moranci, Neil Moranci, Donna Moranci, Mary Parrish, Lugenia Gordon, Helen Dalley, Betsy Webster, Betsy R. Blattmachr, Nancy Burner, and Cornelius P. Dugan. Steve Forbes, as an individual and in his capacity as a candidate for President, is a plaintiff-intervenor.

The defendants are William D. Powers, Chairman, New York Republican State Committee; New York Republican State Committee; New York State Board of Elections; Owen T. Smith, Carol Berman, Evelyn J. Aquila, and Helena Moses Donohue, Commissioners, New York State Board of Elections; New York City Board of Elections; Douglas Kellner, Vincent Cuttita, Paul Mejias, Vincent J. Velella, Weyman A. Carey, Ronald J. D'angelo, Seymour Sheldon, Kathleen Wagner, Gertrude Strohm, and Ferdinand Marchi, Commissioners, New York City Board of Elections; Erie County Board of Elections; Roger Blackwell and Ralph Mohr, Commissioners, Erie County Board of Elections; Nassau County Board of Elections; Suffolk County Board of Elections; Gerald Edelstein and Gerald Berger, Commissioners, Suffolk County Board of Elections; Monroe County Board of Elections; M. Betsey Relin and Ronald J. Starkweather, Commissioners, Monroe County Board of Elections.

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Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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CROSS-PETITION FOR WRIT OF CERTIORARI

On February 12, 1996, the plaintiffs below and cross-respondents here ("plaintiffs") petitioned this Court for a writ of certiorari to review the United States Court of Appeals for the Second Circuit's December 21, 1995 judgment and January 18, 1996 written opinion in this case. *Larry Rockefeller, et al. v. William Powers, et al.*,

No. 95-1273. On March 13, 1996, the New York Republican State Committee and its chairman William D. Powers (collectively "State Party" or "Party") filed an opposition to plaintiffs' petition. The State Party hereby respectfully cross-petitions for a writ of certiorari.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals vacating the district court's preliminary injunction was issued January 18, 1996 and is reported officially at 74 F.3d 1367 (2nd Cir.); a copy of the decision is also reprinted at Appendix ("App.") 3a-37a of the plaintiffs' petition for writ of certiorari in this case. The memorandum of decision of the United States District Court for the Eastern District of New York is reported officially at 909 F. Supp. 863 (E.D.N.Y.) and is reproduced at App. 38a-57a.

JURISDICTION

The United States Court of Appeals for the Second Circuit entered judgment in this case on December 21, 1995, and issued an opinion on January 18, 1996. This cross-petition for certiorari is being filed within 90 days of the date the court of appeals entered judgment pursuant to Supreme Court Rule 13.4. This Court has jurisdiction under 28 U.S.C. § 1254(1) (1994).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section one of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statutes involved in this case are Chapter 586(2) of the Laws of New York, and New York Election Law § 6-136, which are reproduced respectively at App. 66a-69a & 70a-81a.

This case also involves State Party Rule 24, which provides that:

> The selection of delegates and alternative delegates to [the Republican] National Convention shall be governed by the Rules of the Republican Party (National), the Call for the National Convention, the Rules of the New York Republican State Committee and New York State Election Law. . . . Candidates for the positions of delegate and alternate delegate shall qualify for the ballot of the primary election pursuant to the designating petition process delineated in Articles two (2) and six (6) of the New York State Election Law.

STATEMENT OF THE CASE

On December 1, 1995, the United States District Court for the Eastern District of New York ruled that the State Party's delegate-selection rules violated the equal protection clause of the Fourteenth Amendment. The district court issued a preliminary injunction barring the State Party from using its rules in the March 7, 1996, New York presidential primary and barring New York election

officials from enforcing state statutes that implemented the Party's rules. App. 63a-65a. The district court subsequently issued a memorandum opinion and order. App. 38a-57a.

On December 21, 1995, a panel of the United States Court of Appeals for the Second Circuit heard the State Party's expedited appeal and, ruling from the bench, summarily reversed the trial court and vacated the preliminary injunction. On January 18, 1996, the panel issued a written opinion. App. 3a-37a.[1] A fuller discussion of the factual background of this case can be found in the Statement of the Case of the State Party's Opposition to Plaintiffs' Petition for Writ of Certiorari filed March 13, 1996.

REASONS FOR GRANTING THE WRIT

Few matters of federal law are more important than the fundamental right of political parties to choose the rules that will apply to the selection of delegates to their quadrennial national conventions. Of at least equal importance is the right of party members to participate in the delegate-selection process and to support the presidential candidates of their choice. Given that this case implicates all of these fundamental rights, little wonder that *all* of the parties in this action agree that the Court should grant certiorari and set this matter down for plenary review.

In seeking certiorari, plaintiffs contend that the Republican State Party's chosen method for selecting dele-

[1] After the Second Circuit vacated its first injunction, the district court ruled that the State Party's delegate rules violated the First Amendment on February 21, 1996, issuing a second preliminary injunction enjoining the Party from using its rules in the March 7 primary. On February 29, 1996, the Second Circuit affirmed. Because the New York primary was just days away, and to avoid creating further electoral confusion, the State Party decided not to seek emergency relief from this Court prior to the primary. In order to vindicate and protect its constitutional rights, however, the State Party plans to file a petition for certiorari regarding the second injunction.

gates to the Party's presidential primary ballot violates equal protection. The State Party cross-petitions for certiorari to confirm that in light of this Court's rulings in *O'Brien v. Brown, Cousins v. Wigoda* and *Democratic Party of U.S. v. Wisconsin ex rel. LaFollette*, challenges to a political party's presidential-selection rules are not justiciable particularly where, as here, the challengers are party dissidents who seek to substitute their own views for the collective judgment of their political party.

Challenges to a political party's standards and procedures for delegate selection simply are not justiciable. Indeed, this Court has *never* entertained, on the merits, a challenge to the manner in which a political party selects delegates to its national convention. The delegate-slate signature rules at issue here reflect judgments by a political party as to how to govern itself. New York Republican delegates chosen by Party members under these procedures will not merely cast ballots for their preferred presidential candidates at the Republican National Convention this summer; they also will write the Republican Party platform, adopt Party rules, confirm delegate credentials, and otherwise provide for Party governance.

Given the extraordinary associational interests that are at stake, this Court should reaffirm in the face of conflicting opinions among several circuit courts that a political party has the fundamental right to determine for itself, free from judicial interference, the rules and procedures that will govern the selection of delegates to its national convention.

I. PLAINTIFFS' CHALLENGE TO THE STATE PARTY'S STANDARDS AND PROCEDURES FOR CHOOSING ITS CONVENTION DELEGATES IS A QUINTESSENTIAL INTERNAL PARTY DISPUTE THAT IS NOT JUSTICIABLE.

The trial court's preliminary injunction and the Second Circuit's vacation of that injunction rest on the resolution of issues that are not justiciable. This Court has repeatedly held that a core component of the freedom of association protected by the First Amendment is "a political party's decisions about the identity of, and *the process for electing*, its leaders." *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 229 (1988) (emphasis added); *see also Democratic Party of U.S. v. Wisconsin ex rel. LaFollette*, 450 U.S. 107, 124 (1981) ("[a] political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution").

Of course, the Court did reach the merits and did intrude into a political party's primary process in the so-called "White Primary" cases. *See, e.g., United States v. Classic*, 313 U.S. 299, *reh'g denied*, 314 U.S. 707 (1941); *Smith v. Allwright*, 321 U.S. 649, *reh'g denied*, 322 U.S. 769 (1944). In those cases, however, the primaries were (1) designed to and effectively excluded African-Americans from any meaningful vote and, hence, implicated the nation's compelling interest in eradicating racial discrimination, and (2) the primaries virtually served as the general election because success in the primary was "tantamount to election."

Neither of these circumstances is present here. Moreover, the State Party adopted Rule 24 only after full and open debate.[2] Under these circumstances, no compelling

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[2] Party members have numerous opportunities to propose modifications to the delegate-selection rules. In fact, at least one of the plaintiffs in this action—Lugenia Gordon—has repeatedly proposed

consideration exists to lead courts to stretch the bounds of justiciability. The Court should review this case and confirm that this intra-party political dispute and others like it are not justiciable.

A. This Court Has Repeatedly Cautioned That Federal Courts Should Not Intervene In Internal Disputes About How Political Parties Select Delegates To Their National Conventions.

In three landmark decisions over the last two decades, this Court regarded disputes over how political parties select national convention delegates as non-justiciable. Despite the plaintiffs' assertion that their challenges "[do] not purport to interfere with the operation of the Republican National Convention," (Plaintiffs' Dec. 15, 1995 Appeals Brief at 40), and the panel's similar finding, (App. 19a-20a) such is clearly not the case. Delegates *are* the Convention. How delegates are selected directly determines the composition of the Convention. When federal courts supplant a political party's delegate-selection rules, the party is forced to choose between abandoning its rules and seating the disputed delegates at the convention, or asserting its First Amendment prerogatives and seating only those delegates who have complied with party rules, thereby risking contempt. *See Cousins v. Wigoda,* 419 U.S. 477 (1975).

In *O'Brien v. Brown,* 409 U.S. 1 (1972), this Court stayed an attempt by the District of Columbia Circuit to regulate the seating of delegates at a national convention. The Court expressed "grave doubts" about the propriety of the court of appeals' ruling, which had overturned the

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modifications to the National Republican Party delegate-selection rules, but Ms. Gordon has been unable to persuade her fellow Republicans to change the rules. *See* State Party Dec. 8, 1995 Appeals Brief at 5. Having failed to persuade her fellow Republicans, Ms. Gordon and the other plaintiffs essentially seek to use the federal courts to substitute their own judgment for that of the majority of their party.

Democratic Party's decision to seat certain delegate groups at the 1972 Democratic National Convention, thereby "interject[ing the court] itself into the deliberative processes of a national political convention." *Id.* at 4. The Court expressed serious reservations regarding the "power of the federal judiciary to review actions heretofore thought to lie in the control of political parties." *Id.* The Court concluded that "[h]ighly important questions [were] presented concerning justiciability" and declined to reach the merits of the delegate dispute. *Id.*

Just two years later in *Cousins v. Wigoda,* 419 U.S. 477 (1975), the Court declined to disturb the Democratic Party's decision to seat one of two competing groups of Illinois delegates at its national convention. Stressing that the "National Democratic Party and its adherents enjoy a constitutionally protected right of political association," (*id.*, at 487) the Court concluded that " 'the convention itself [is] the proper forum for determining intra-party disputes as to which delegates [should] be seated.' " *Id.* at 491 (quoting *O'Brien,* 409 U.S. at 4). The Court refused to intervene, even though the Democratic Party's decision to honor the slate chosen by party caucus resulted in the exclusion of a delegate slate that had been selected in the Illinois Democratic primary, held pursuant to Illinois state law.[3]

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[3] Ironically, the lower courts here reached the merits despite the fact that New York state law deferred to and was fully consistent with the State Party's delegate-selection rules. Revealingly, the New York Attorney General below noted that New York State deferred to the State Party's rules because the state concluded it would be unconstitutional not to do so:

> Mindful of First Amendment associational rights of the parties, especially in light of emphatic pronouncements from the Supreme Court over the past 20 years, the New York Legislature would never presume to dictate to the parties how national convention delegates should be selected or allocated.

New York Attorney General Dec. 8, 1995 *Amicus Curiae* Appeals Brief at 7-8. *See also id.* (noting that "states may not interfere

Finally, in *LaFollette*, 450 U.S. 107, this Court declined to upset the Democratic Party's decision not to seat a state's group of delegates that had been selected in a state-mandated open primary. Consistent with *Cousins v. Wigoda*, *LaFollette* reaffirmed that it was for the Democratic Party and "not the Wisconsin Legislature or any court—to determine the appropriate standards for participation in the Party's candidate selection process." *Id.* at 124, n.27. *See also id.* at 123 ("it is not for the courts to mediate the merits of this dispute").[4]

In the wake of these Supreme Court decisions, several courts of appeals, unlike the Second Circuit here, have held that intra-party delegate-rules disputes are not justiciable. *See Wymbs v. Republican State Executive Comm.*,

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with a political party's discretion protected by the First Amendment in how to organize itself, conduct its affairs and select its leaders") (citing *Eu v. San Francisco County Democratic Comm.*, 489 U.S. 214, 230 (1989)); *id.* at 8 ("parties may not be hindered in taking internal steps affecting party process for the selection of candidates") (citing *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 224-25 (1986).

Thus, the New York Attorney General recognized that if the State had altered the State Party's delegate-selection rules as the district court did here, it would have been unconstitutional.

[4] The associational rights at stake here are even stronger than those that the Court found to be controlling in *LaFollette*. In *LaFollette*, the Democratic Party was still able to choose the delegates to the national convention; those delegates were merely bound to cast their votes for president at the national convention in accord with the results of Wisconsin's open primary. In this case, the process of selecting the delegates themselves is directly at issue, and the State Party's choice as to the appropriate process for selecting those delegates has been altered. Even the dissenting justices in *LaFollette* agreed that such direct interference with a political party's delegate-selection process raises serious First Amendment concerns and likely impinges on the constitutionally protected associational rights of the party. *See id.* at 129 (Powell, J., dissenting) ("While this regulation affecting participation in the primary is hardly insignificant, it differs substantially from the direct state interference in delegate selection at issue in *Cousins*.").

719 F.2d 1072, 1082-83 (11th Cir. 1983), *cert. denied*, 465 U.S. 1103 (1984) (holding that a dissident group of Republicans' challenge to the Florida Republican Party's delegate-selection rules was non-justiciable and noting that " 'it is not for the courts to mediate the merits of [such a] dispute' ") (quoting *LaFollette*, 450 U.S. at 123-24); *see also Bachur v. Democratic Nat'l Party*, 836 F.2d 837, 841 (4th Cir. 1987) (ruling that a challenge to a DNC rule requiring equal division of delegates based on gender was non-justiciable). *Cf. Ripon Soc'y, Inc. v. National Republican Party*, 525 F.2d 567, 577-78 (D.C. Cir. 1975) (en banc), *cert. denied*, 424 U.S. 933 (1976) (holding that First Amendment considerations protected the Republican Party's bonus-delegate rule and might well render it non-justiciable). Thus, prior to the Second Circuit panel's ruling, it was settled federal law that a political party has a constitutionally protected right to establish delegate-selection rules free from judicial interference.[5]

B. Despite Clear Precedent To The Contrary, The Court Of Appeals Found This Intra-Party Rules Dispute To Be Justiciable And Impermissibly Interferred With The State Party's Associational Rights.

The Second Circuit panel erroneously found it could entertain plaintiffs' attempts to substitute their own views of what the State Party's delegate-selection rules should be for the collective decision of their Party. In so ruling, the panel disregarded this Court's clear teachings, created a split within the courts of appeals, and threatens to expose

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[5] The panel sought to distinguish *O'Brien* and this Court's other decisions involving political party national conventions by asserting that this case does not affect the Republican National Convention and, in any event, does not involve a challenge to national party rules. *See* App. 19a-20a n.12. Even if this case did not affect the Republican National Convention—and it does—the panel's attempt to distinguish *O'Brien* presumes without citation that state party delegate-selection rules are more justiciable than national party delegate rules. This court, however, has never so held.

the internal workings of political parties to unjustified future judicial interference.

In ruling that this intra-party dispute is justiciable, the panel noted that although the State Party had chosen the ballot-access scheme that was employed, New York State had merely offered the Party a choice of two statutory schemes. The panel concluded that:

> Although the Republican State Committee is therefore the but-for cause of the supposed disparity, the Committee's selection of one of two state-offered options does not abrogate state action. . . . We do not consider the justiciability of a challenge to the State Republican Committee's *choice* of the option embodied in Section 2. The challenge here is to state laws that create (although they do not necessarily impose) the five percent or 1250 signature requirement.

Rockefeller v. Powers, App. 17a (emphasis in original).

The panel failed to address, however, the fact that the state only enacted this two-prong statutory scheme at the behest of the Democratic and Republican State Parties. In fact, the State Party expressly asked New York State to adopt the 1250 or 5% signature requirement. *See* New York Attorney General Dec. 8, 1995 *Amicus Curiae* Appeals Brief at 7 ("It is by no means a 'state secret' that Chapter 586 was enacted to recognize the process dictated by the respective rules of the Republican and Democratic Parties simply to aid the major parties in an orderly undertaking.").

Public commentary confirms that the rules challenged here are the Party's rules.[6] The State Party and its chairman are defendants in this case because they were responsible for the disputed procedures. The district court spe-

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[6] *See, e.g.*, "Mr. D'Amato, Let Your People Go," *New York Times*, Mar. 30, 1995, at A22; Dao, "Legal Maze Gives Dole Big Edge in New York G.O.P. Primary," *New York Times*, Sept. 17, 1995, at 43.

cifically enjoined these defendants from observing Rule 24 and issued an injunction altering the Party's delegate-selection rules. The State Party does not forfeit its First Amendment associational rights by taking advantage of the state's election facilities. Moreover, the state's mere acceptance of the State Party's delegate-selection rules, upon which the Party unquestionably had the constitutional right to decide, does not transform this matter into a justiciable controversy.[7] The panel's decision to reach the merits presumes that there is a constitutional right to vote for a national convention delegate, which this Court has never recognized. Even assuming such a right were to exist, this Court has not addressed how that right would be balanced against competing constitutional rights, such as the State Party's associational rights.

The panel relied heavily upon *Bullock v. Carter*, 405 U.S. 134 (1972), for its ruling that this case is justiciable. In *Bullock*, this Court invalidated a Texas statute which required prospective candidates to pay an exorbitant filing fee in order to participate in a primary election. The Court expressly addressed the issue of justiciability, holding that "the mechanisms of such elections is the creature of state legislative choice and hence is 'state action.'" *Id.* at 140. The Court dismissed Texas's contention that not every aspect of a primary election is judicially cognizable, concluding that justiciability was not an issue because "[the Court was] concerned with the constitutionality of a state law rather than action by a political party." *Id.* at 141. *Bullock* did not concern any political party's delegate-selection procedures.

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[7] New York State not only has a rational basis, but indeed a compelling governmental interest, to accommodate the State Party's delegate-selection rules. *See* note 3, *supra*. The First Amendment shields the State Party's choice of ballot access standards from governmental interference. Thus, the Party's delegate rules should be free of any judicial review, at least absent a compelling reason to intervene, such as racial discrimination, which is not present here.

By contrast, the delegate-selection rules at issue here were designed by the State Party. All parties to this action agree that it was the Republican and Democratic State Parties that chose their respective delegate-selection rules and that these alternatives were merely codified by the New York State Legislature. In fact, the plaintiffs acknowledged below that the state Legislature "permitted the leadership of each major party to design separate rules to govern each party's method for designating and electing candidates for delegates from New York to its national convention." Plaintiffs' Amended Complaint at ¶ 32. Similarly, everyone agrees—and the plaintiffs stressed below—that it was the Republican "State Committee [that] caused Section 2 of Chapter 322 to be enacted." *Id.* at ¶ 44.[8] Thus, unlike Texas in *Bullock*, New York only enacted its two-prong ballot-access statutory scheme at the express direction of the state Democratic and Republican Parties.[9]

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[8] *See also* Jeffrey T. Buley Affidavit in Opposition to Plaintiffs' Motion for a Preliminary Injunction and in Support of Defendants' Motion to Dismiss at ¶ 14:

> Chapter 586, Section 2 of the 1995 Laws of the State of New York codifies Rule 24 of the [Party] Rules. The October 31, 1995 letter from defendant Powers to the State Board 'opting' to follow the procedures of Sec. 2 of Chapter 586 for the 1996 New York Republican presidential primary was a mere formality.

In addition, plaintiffs pointed out below that the State Committee even decided the timing of the delegate-petition process. *See* Plaintiffs' Amended Complaint at ¶ 45 ("[A]t the insistence of the State Committee and Powers, Chapter 586 was enacted so as to require that Republican petition signatures for the presidential primary ballot be gathered between November 28, 1995 and January 4, 1996.").

[9] The Second Circuit panel's reliance (App. 18a-19a) on *Mrazek v. Suffolk County Bd. of Elections*, 630 F.2d 890 (2d Cir. 1980), and *Montano v. Lefkowitz*, 575 F.2d 378 (2d Cir. 1978), is similarly misplaced. In *Mrazek*, the court rejected an equal protection challenge to a party rule that permitted party members outside a particular political division to participate in the nomination of non-party candidates seeking to represent the district in the New York legislature. In upholding the party rule, the court cautioned

The panel also erroneously relied upon *Gray v. Sanders*, 372 U.S. 368 (1963), in ruling that this controversy is justiciable. In *Gray*, the Court applied *Baker v. Carr* one-person, one-vote principles to strike down Georgia's county unit system through which primary voting was disproportionately weighted by counties. *Gray*, however, arose out of a one-party state in the early 1960s, in which success in the Democratic primary was tantamount to election to governmental office. *See Sanders v. Gray*, 203 F. Supp. 158, 167 (N.D. Ga. 1962) ("It is a fact known to all that the Democratic candidate has, without exception, at least during the present century, been the choice of voters at the General election."). Thus, as a functional matter, the primary really was the general election; therefore, one-person, one-vote principles applied. By contrast, the primary election here is for Republican Party office only.

Moreover, the electoral device at issue in *Gray* was not used to elect party members who are responsible for formulating party policy and enacting party rules. There was no allegation in *Gray* that the plaintiffs' challenge to the unit rule threatened any political party's First Amendment associational rights, nor was there any indication of an intra-party dispute concerning the unit rule. Therefore, *Gray* did not implicate the serious justiciability concerns that arise when federal courts attempt to adjudicate internal party conflicts.

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that "[political] parties are best situated to define the proper constituencies of their nominating delegates," and that such party "determinations should not be invalidated unless such definitions are utilized to exclude or disadvantage discrete groups or minorities." *Id.* at 897 n.11.

Similarly, in *Montano*, the court invalidated a New York law and a Democratic party rule that permitted individuals to vote on nominations to fill U.S. House vacancies who lived outside of the affected congressional district. Revealingly, other courts have questioned the continued validity of *Montana*. *See, e.g., Di Rosa v. Dodd*, 514 F. Supp. 258, 262 (E.D.N.Y. 1981) (questioning whether *Montano* is tenable after *LaFollette* and *Mrazek*).

That *Gray* does not apply to intra-party presidential primary disputes has been recognized by the Eleventh Circuit. For example, in *Wymbs*, 719 F.2d 1072, the trial court had applied the one-person, one-vote principle of *Gray* in invalidating the Florida Republican Party's delegate-selection rules. Reversing and holding the matter to be non-justiciable, the Eleventh Circuit noted that the

> district court [had] passed over the first amendment in its heavy reliance upon *Gray v. Sanders* . . . *LaFollette* instructs that "[t]he freedom to associate for the 'common advancement of political beliefs' necessarily presupposes the freedom to identify the people who constitute the association . . . [A] State, or a court, may not constitutionally substitute its own judgment for that of the Party."

Wymbs, 719 F.2d at 1084 (citations omitted). The district court and the panel here made the same fundamental mistake.[10]

* * * *

The State Party's delegate-selection rules reflect a judgment by a political party as to how to govern itself. The Republican National Committee, which until its dismissal was a co-defendant in the trial-court proceedings, highlighted the importance of this process:

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[10] The other federal circuit court decision that arguably reached the merits of an internal delegate rules dispute is *Ripon Soc'y v. National Republican Party*, 525 F.2d 567 (D.C. Cir. 1975) (en banc), *cert. denied*, 424 U.S. 933 (1976). The court there reversed a trial court judgment that the Republican Party's bonus-delegate rule was unconstitutional. However, the opinion noted that the grounds for reversal came very close to a holding that the issue was not justiciable, and reserved the issue of whether, in fact, the issue was not justiciable. *Id.* at 577-78. The outcome was not affected since the rule survived in either event. *See also Bachur v. Democratic Nat'l Party*, 836 F.2d 837, 841 (4th Cir. 1987) (holding a challenge to the DNC's "Equal Division Rule" to be non-justiciable and suggesting that *Ripon* is best understood as a non-justiciability ruling).

> "Between quadrennial national conventions, the [RNC] is the embodiment and manager of the affairs of the Republican National Party. *During the Republican National Convention, the convention itself is the Party. It conducts all of its own business, including the resolution of credentials disputes, and sets the rules and platform upon which the Republican National Committee will act until the next quadrennial convention.*"

Defendant Republican National Committee's Memorandum of Law Opposing Plaintiffs' Motion for Preliminary Injunction at 2 (quoting *Wymbs*, 719 F.2d at 1074 n.7) (emphasis added).

Given that the New York delegates selected to the Republican National Convention through State Party Rule 24 will *constitute* the National Republican Party for the next four years, the panel's decision to reach the merits of this dispute implicates extraordinary First Amendment associational interests. Moreover, if left unreviewed, this ruling will subject the procedures of the State Party to unjustified future judicial oversight, thereby threatening the ability of New York Republicans to freely exercise their fundamental right of political association.

CONCLUSION

For the foregoing reasons, the Court should grant this petition and set the case for plenary review.

Respectfully submitted,

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